IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 192 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAIKH FAJAL SHAIKH NAJIR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 192 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS HARSHA DEVANI,AGP, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 2.11.2002 by

which he is detained as a bootlegger under PASA. Along with the detention order he is also served with the grounds of detention. There is reference about one criminal case which is filed against the petitioner under the Bombay Prohibition Act. The detaining authority after considering the aforesaid criminal case as well as after considering the statement of witnesses has passed the aforesaid order of detention. The said order is challenged at the instance of the petitioner on various grounds.

2. Learned advocate for the petitioner submitted that the said criminal case is registered against the petitioner on 16.9.2002 while the detention order is passed on 2.11.2002. It is submitted that there is delay of about 1 month and 15 days in passing the detention order from the alleged last incident. It is submitted that if really the activities of the petitioner were such which were required to be curbed immediately, it was not necessary for the detaining authority to wait for such a long time as delay in passing the detention order frustrates the entire object of preventive detention. In this behalf, learned advocate for the petitioner relies on the decision of this Court in Special Civil Application No. 5321 of 2002 (Coram: R.P. Dholakia, J) and particularly para 4 of the said judgment which reads as under:-

> 4. It appears that the last offence is registered against the detenu on 28.3.2002 and the order of detention has been passed on 30.4.2002 and hence, there is a delay in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

3. In the instant case, the State has not filed any reply explaining the delay in any manner. As such no reply has been filed at all. In that view of the matter, the averment of the petitioner is required to be accepted as it is not controverted in any manner by filing the reply. In that view of the matter, the petition is required to be allowed on the ground of delay in passing the order of detention and accordingly the detention order is required to be quashed and set aside.

4. For the foregoing reasons, the petition is allowed. The order of detention dated 2.11.2002 is quashed and set aside. The detenu, Shaikh Fajal Shaikh Najir is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J)

zgs/-